

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Michael Nash, Co-Chairs
Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair

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DATE: September 26, 2003

SUBJECT: Domestic Violence and Civil Harassment Orders: Allocation of Service of
Process Fees (adopt form CH-101/DV-290) (Action Required)

Issue Statement

Recently enacted legislation requires the Judicial Council to develop forms to enable litigants, the courts, and the sheriff or marshal to properly allocate service of process fees for specified Domestic Violence Prevention Act (DVPA) and civil harassment orders.

Recommendation

The Family and Juvenile Law Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council, effective January 1, 2004, adopt form CH-101/DV-290, *Request and Order for Free Service of Restraining Order*.

The form is attached at page 6. Excerpts of the relevant statutes are attached at pages 7-8.

Rationale for Recommendation

Assembly Bill 2030, effective January 1, 2003, authorizes the sheriff or marshal to serve, without charge to the petitioner, Domestic Violence Prevention Act (DVPA) restraining orders and civil harassment orders relating to stalking or sexual assault. AB 2030 requires the Judicial Council to establish a policy that allows the sheriff or marshal to bill the courts for the cost of serving such orders. The legislation also requires the Judicial

Council to develop forms for litigants' use in seeking free service of process by the sheriff or marshal.

Background

AB 2030 (Stats. 2002, ch. 1009) amended Code of Civil Procedure section 527.6 by adding new subdivision (p). That subdivision requires the Judicial Council to develop a form that petitioners can use to request that sheriffs or marshals serve certain specified protective orders without prepayment of service fees. Code of Civil Procedure section 527.6(p)(1) states:

- (1) Notwithstanding any other provision of law, upon the application of the petitioner there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:
 - (A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.
 - (B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence resulting from a threat of sexual assault. As used in this subparagraph, "sexual assault" means the offenses enumerated in Section 1036.2 of the Evidence Code.
 - (C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code, unless the applicant is eligible for a waiver of the payment of the fee for serving the order pursuant to subdivision (b) of that section.

The statutory reference to Family Code section 6222 is somewhat confusing. That section specifies that any fee otherwise payable to the sheriff or marshal for serving a domestic violence restraining order may be waived if the petitioner qualifies for a fee waiver. Furthermore, it states that if the petitioner does not qualify for a fee waiver under that section, the petitioner may qualify under Code of Civil Procedure section 527.6 (p)(1), set forth above. The reference is somewhat circular. However, the legislative history indicates that the Legislature intended to completely waive any service fee that might otherwise be payable by the petitioner, regardless of the petitioner's ability to pay. Using this analysis, the only issue is how the fees will be allocated between the courts and law enforcement.

Allocation of fees for service of orders

Under Government Code section 6103.2(b)(4)—also amended by AB 2030—the ordinary fees charged by sheriffs and marshals for service, for cancellation of service at the

request of the party who originally requested service, and for preparation of a not-found return showing that service was attempted but failed are to be billed to the superior court that issued the orders to be served.

However, Government Code section 26720.5 states that fees otherwise payable by a litigant to the sheriff or marshal for service of process shall be *waived* in any case in which the litigant is permitted by the court to proceed in forma pauperis. It is clear that the sheriff or marshal must waive any service fee for restraining orders for persons who qualify for a fee waiver, and for persons who do not qualify the sheriff or marshal can bill the court for the service fee. Thus, in every case where the litigant requests free service of an applicable order, the litigant should be directed to complete an *Application For Waiver of Court Fees and Costs* (form 982(a)(17)).

The new mandatory form CH-101/DV-290 establishes a protocol for a petitioner who asks a sheriff or marshal to serve an applicable civil harassment order or a DVPA order without cost to the petitioner. The form also serves as a tool with which a court and the sheriff or marshal can track service fees. It clarifies that the law enforcement agencies can bill the court for service only in cases in which the litigant did *not* qualify for a fee waiver.

The original signed form will be filed with the court; the litigant or the court will then transmit a copy of the form, along with the court order, to the sheriff or marshal for service. After service, the sheriff or marshal will indicate on the form that service was completed and the fee, if any. The sheriff or marshal will then submit the form to the court for payment.

Alternative Actions Considered

One alternative is to incorporate the substantive parts of the proposal into the *Application for Waiver of Court Fees and Costs* (form 982(a)(17)). The committees considered and rejected this alternative because form 982(a)(17) is used for a wide variety of purposes. Adding information about the fee waiver for specified domestic violence and civil harassment cases would cause confusion.

The proposed form is necessary for compliance with the legislative mandate.

Comments From Interested Parties

The proposal was circulated for comment in the spring 2003 cycle. Of the 23 comments received, 12 commentators agreed with the proposal, 8 agreed with the proposal with modifications, and 3 did not agree.¹

¹ A chart summarizing the comments and the committees' responses is located at pages 9-22.

Two of the commentators who disagreed with the proposal were opposed to the legislation altogether because of the newly imposed cost to the courts. One commentator suggested that the form be incorporated into the existing fee waiver forms.

Clarify process

Several commentators expressed confusion about how to use the form. One commentator thought that a litigant would need to complete the *Application for Waiver of Court Fees and Costs* (form 982(a)(17)), the *Order on Application for Waiver of Court Fees and Costs* (form 982(a)(18)), and the *Request and Order for Free Service of Restraining Order* (form CH-101/DV-290). This is not the intended procedure.

Litigants who need a fee waiver order only to secure free service of the protective order should complete only the *Application for Waiver of Court Fees and Costs* (form 982(a)(17)) and the *Request and Order for Free Service of Restraining Order* (form CH-101/DV-290). The *Request and Order for Free Service of Restraining Order* will act as the fee waiver order. A litigant may need to complete all three forms to secure a fee waiver for other issues. This may be necessary if, for example, a litigant seeks to waive the filing fees for a dissolution or paternity action filed in conjunction with his or her DVPA action. In those types of cases, a litigant would need to submit the *Order on Application for Waiver of Court Fees and Costs* (form 982(a)(18)) because it has more specifics about how long the fee waiver is applicable, whether particular fees are still required (such as court reporter fees), etc. The court needs that information because the dissolution or other matter is ongoing and may require the payment of fees in the future. In contrast, service of a restraining order takes place once or twice within a very brief period of time, usually about a month. It is a very discrete issue. The Administrative Office of the Courts (AOC) plans to distribute an informational letter to the courts to clarify this matter.

Another commentator suggested that further instructions be provided to inform litigants of which forms they should complete and where to take them. However, courts and sheriffs' departments have instituted a variety of procedures around the state. Some courts will send the completed forms by facsimile to the sheriff's department; others will require the litigant to do so. Providing meaningful and specific information about the variety of ways this form will be processed in different counties is not feasible. In its informational letter described above, the AOC plans to alert courts to these issues and to suggest that local courts develop brief instruction sheets to guide litigants.

Litigants who have already been granted a fee waiver in their case do not need to complete another fee waiver application. The court clerk can check the appropriate box on the form and sign it. Similarly, if a litigant knows he or she would not qualify for a fee waiver, he or she does not need to complete the form at all. In those cases, the clerk of the court can sign the *Request and Order for Free Service of Restraining Order* (form CH-101/DV-290).

Require sheriff's certification

One commentator suggested that a section be added to the form for the sheriff or marshal to “certify” that the service was completed. However, it is likely that the administrative staff in law enforcement, not the actual server, will complete the form. Any certification that service was attempted or completed will be found on the actual proof of service form.

Allow clerks to authorize nondiscretionary approvals

One commentator suggested that the form specify that the clerk is authorized to sign off on the *Request and Order for Free Service of Restraining Order* (form CH-101/DV-290) in cases that qualify for a nondiscretionary fee waiver pursuant to rule 985(d) of the California Rules of Court. The form has been revised to reflect this suggestion.

Plain language style

One commentator suggested that the form be made available in plain language like the other domestic violence restraining order forms. However, the form is used in civil harassment as well as domestic violence cases. It should be put in plain language only if the other civil harassment forms are put in plain language.

Incorporate form into existing fee waiver forms

One commentator suggestion that the form be incorporated into the existing fee waiver forms (*Application for Waiver of Court Fees and Costs*, form 982(a)(17), and *Order on Application for Waiver of Court Fees and Costs*, form 982(a)(18)). The fee waiver forms are used for a multitude of types of actions. Incorporating the suggested change into those forms would create confusion.

Implementation Requirements and Costs

Courts will incur some costs in printing the new form, as well as costs related to service of specified restraining orders by the sheriff or marshal. However, that cost was analyzed as part of the legislation. The Budget Act contains a provision for \$3 million to be available to reimburse courts for costs related to the legislation.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and State Bar number, if attorney):		FOR COURT USE ONLY DRAFT 5 09/29/03
ADDRESS WHERE YOU WANT MAIL SENT:		
TELEPHONE NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PROTECTED PERSON:		CASE NUMBER:
DEFENDANT/RESTRAINED PERSON:		
REQUEST AND ORDER FOR FREE SERVICE OF RESTRAINING ORDER (Domestic Violence or Harassment (sexual assault or stalking))		Judge: Dept.:

PROTECTED PERSON'S REQUEST

1. I ask the sheriff or marshal to serve the restraining order for free because (check either item a or b):

- a. ☐ I asked for a restraining order on form DV-100.
- b. ☐ I asked for a restraining order on form CH-100, and my request was based on my fear of (you must check at least one box)
- (1) ☐ sexual assault
- (2) ☐ stalking

2. I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT YOUR NAME)

(SIGN YOUR NAME)

COURT ORDER AND INSTRUCTIONS TO SHERIFF OR MARSHAL

3. The court reviewed the protected person's request and finds that (check one box only):

- a. ☐ The protected person qualifies for a fee waiver.*
- b. ☐ The protected person does not qualify for a fee waiver.**
- c. The order (DV-110 or DV-130 or CH-120 or CH-140 and referenced documents) can be served by the sheriff or marshal without cost to the protected person.

Date:

☐ CLERK, by _____, Deputy
(Clerk may grant in full a nondiscretionary fee waiver, see Cal. Rules of Court, rule 985(d).)

☐ _____
JUDICIAL OFFICER

The sheriff or marshal will fill in box below and return a copy of this form to the court listed above.

Service of the order was attempted or made on (date): _____ Fee: \$ _____

* The protected person qualifies for a fee waiver under rule 985 of the California Rules of Court.

** **NOTICE to Law Enforcement:** Government Code section 6103.2(b) allows the sheriff or marshal to bill the court ONLY for orders or injunctions described in subdivision (p)(1) of Code of Civil Procedure section 527.6. The sheriff or marshal may bill the court for service only if box 3(b) is checked above.

Selected Provisions of Relevant Statutes

Family Code section 6222

- (a) There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division if the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.
- (b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. If the petitioner is not eligible for the fee waiver pursuant to this subdivision, he or she may be eligible pursuant to paragraph (1) of subdivision (p) of Section 527.6 of the Code of Civil Procedure.

Code of Civil Procedure section 527.6 (p)

- (1) Notwithstanding any other provision of law, upon the application of the petitioner there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:
- (A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.
 - (B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence resulting from a threat of sexual assault. As used in this subparagraph, "sexual assault" means the offenses enumerated in Section 1036.2 of the Evidence Code.
 - (C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code, unless the applicant is eligible for a waiver of the payment of the fee for serving the order pursuant to subdivision (b) of that section.
- (2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

Government Code section 6103.2

- (a) Section 6103 does not apply to any fee or charge or expense for official services rendered by a sheriff or marshal in connection with the levy of writs of attachment, execution, possession, or sale. The fee, charge, or expense may be advanced to the sheriff or marshal, as otherwise required by law.
- (b) (1) Notwithstanding Section 6103, the sheriff or marshal, in connection with the service of process or notices, may require that all fees which a public agency,

or any person or entity, is required to pay under provisions of law other than this section, be prepaid by a public agency named in Section 6103, or by any person or entity, prior to the performance of any official act. This authority to require prepayment shall include fees governed by Section 6103.5.

...

(4) The requirement for prepayment of a fee deposit does not apply to the orders or injunctions described in paragraph (1) of subdivision (p) of Section 527.6 of the Code of Civil Procedure. However, a sheriff, marshal, or constable may submit a billing to the superior court for payment of fees in the manner prescribed by the Judicial Council. The fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
(adopt form CH-101/DV-290)

	Commentator	Position	Comment on behalf of group?	Comment	Committees' Response
1.	Mr. Steve Allen Director of Legal Services Center for Community Solutions	AM	N	Do not put burden on litigants – court should fill out and process form(s).	Litigants will be required to complete, at most, two additional forms. Some courts have resources to assist litigants with forms.
2.	Ronald L. Bauer Superior Court of California, County of Orange	AM	Y	<p>The Rules and Forms Committee of the Orange County Superior Court reviewed this item and agree with the following comments submitted by managers of Civil and Family Law Operations and Judge Sheila Fell, member of the Rules and Forms Committee.</p> <p>AB2030 and the development of the proposed form to request free service could prove to be quite burdensome to the court, particularly to family courts. Domestic Violence cases are automatically not required to pay a filing fee. As such, fee waiver forms are not completed. The same is true in many Harassment cases where the party checks the box that they should not pay a filing fee. As the Invitation to Comment indicates, in every case where litigants request free service, the litigant will need to complete fee waivers first before the courts could determine if the party does or does not qualify for a fee waiver. Since the proposed form is an order requiring judicial signature, it could mean that many cases would have to go to court which could take up valuable court time, especially in cases where the clerk's office can qualify the fee waiver. The following modifications might make approval simpler and more efficient:</p>	<i>See responses below.</i>

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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				<p>1. Instead of making the form a Request and Order, modify it to be a Request and Instructions to the Sheriff to be certified by the clerk instead of signed by the judicial officer. Replace "Court Order" with "Instructions to the Sheriff." For example:</p> <p>INSTRUCTIONS TO THE SHERIFF</p> <p>1. The protected person's completed Fee Waiver Request <u>was reviewed and the clerk</u> finds that (check one box only):</p> <p>a. ? The protected person qualifies for a fee waiver. The order must be served by law enforcement for free.</p> <p>b. ? The protected person does not qualify for a fee waiver. The order must be served by law enforcement for free.*</p> <p><u>Insert clerk's certification statement here.</u> (date and signature)</p> <p>If the form is modified in this manner, change the title and footer of the form.</p> <p>2. In the section that the Sheriff must complete, instead of requiring the form to be returned to the "court listed above", state that it must be returned to the "Finance Department" of the court listed above. It would seem that in most courts, it will</p>	<p>1. The form was designed so that a litigant would not necessarily need to fill out the <i>Order on Application for Waiver of Court Fees and Costs</i> (form 982(a)(18)), they would only need to complete the <i>Application for Waiver of Court Fees and Costs</i> (form 982(a)(17)). The new form (CH-101/DV-290) would act as the order in those cases. The goal is to reduce the number of forms that litigants are required to complete.</p> <p>Clerks are authorized to grant fee waivers in nondiscretionary cases under Cal. Rule of Court 985(d). The committees agreed to add Clerk certification and notice about authorization. The committees agreed to change the header "Court Order" to "Court Order and Instructions to Sheriff or Marshal."</p> <p>The statutes do not require the sheriff to serve the order, only to do so without charge if they choose to serve the order.</p> <p>2. The Finance Department may have a different address than the general court address. On balance, it would be too</p>

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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				<p>be the Finance Department that must keep track of when the sheriff serves an order and subsequently requests payment.</p> <p>3. In the same box that the Sheriff must complete, it seems that she sheriff/deputy should have to "certify" that the order was served and sign the certification.</p> <p>4. Delete references to Marshal.</p>	<p>burdensome for the person completing the form to ascertain this additional information.</p> <p>3. It is possible that the form may be processed by administrative staff at the Sheriff's department, after proof of service is obtained. The proof of service will contain the required certification.</p> <p>4. The term is referenced in the code. At least two counties in the state have marshals. Therefore, the term must be retained.</p>
3.	Saul Bercovitch Executive Committee of the Family Section of the State Bar of California	A	Y		No response required.
4.	Hon. Kathleen Bryan Commissioner Superior Court of California, County of San Bernardino	A	N		No response required.
5.	Emberly C. Cross Coordinating Attorney Cooperative Restraining Order Clinic	AM	N	Is the Petitioner/Plaintiff required to submit an <i>Application of Court Fees and Costs</i> (Form 982(a)(17)) in order for the court to make the determination in Item 3? If so, this should be included somewhere in the Protected Person's Request either as	It depends on the court. Some courts/sheriffs do not require fee waivers at all. There is a reference in DV-100, item 17 to alert the litigant to inquire about the procedures in the county.

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
(adopt form CH-101/DV-290)

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				an instruction to the Protected Person or a separate item number that says the Application for Waiver of Court Fees and Costs is attached.	
6.	Valerie Fercho-Tillery, Manager and Peggy Kelly, Field Representative Department of Justice	A	N	<p>1. Will this mandatory form be required for the service, by the sheriff or marshal, of civil harassment orders involving sexual assault and/or stalking, and all domestic violence orders?</p> <p>2. Will the petitioner be responsible for providing this form, signed by the judge, along with all orders to be served, to the sheriff or marshal for 'free' service?</p> <p>If the petitioner is responsible, they should be given clear instructions. The DV-100, Item 17 should explain that this form (CH-101/DV-290), signed by a judge, is mandatory for 'free' service. It should also be made clear that the petitioner is responsible for providing the form and any orders to be served to the sheriff or marshal. The CH-150 should also be revised to include this information on page 3, Instructions for the Plaintiff, Items 6 and 10.</p>	<p>1. It depends on the court. Some courts/sheriffs do not require fee waivers at all. There is a reference in DV-100, item 17 to alert the litigant to inquire about the procedures in the county.</p> <p>2. It depends on the jurisdiction. Some courts will send the orders to be served and the form to the sheriff. In other counties, litigants will be required to take the documents. Due to the differences statewide, the form cannot set forth one procedure. Local jurisdictions are encouraged to create clear instructions for litigants so they are aware of local procedures.</p>
7.	Mr. Robert Gerard President Orange County Bar Association	A	Y	These issues do not impact the day-to-day practices of lawyers and instead affect fee allocations between the court and the sheriff or marshal.	No response required.
8.	Karen Houle Supervising Superior Court	AM	N	More clarification as to how the courts would process these (fee waivers submitted with all domestic	The form has been revised to provide more guidance.

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
(adopt form CH-101/DV-290)

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	Clerk Superior Court of California, County of Kern			violence restraining orders).	
9.	Ms. Carla Khal Facilitator Superior Court of California, County of Tulare	A	N	The form is ok if we must have it. Its mere existence may lead some bench officers to believe they can deny the request and therefore not have to bear the cost of reimbursing the sheriff.	Some procedure is necessary to comply with the statute and to allocate costs.
10.	Ms. Leslie Knight Supervising Attorney UCD Family Protection Clinic	A	N	On Item 3, since "Fee Waiver Request" is italicized, it would be clearer if instead it read "Application for Waiver of Court Fees and Costs (form 932(a)(17))."	Agree to reword this advisement to clarify what is required.
11.	Ms. Diana Landmann Family Law Court Manager Superior Court of California, County of San Joaquin	AM	N	<p>1. There is really no way to separate out the reasons that a DV restraining order can be served for free. If you look at DV-100, item 6 – stalking, a credible threat of violence resulting from a threat of sexual assault or sexual assault are lumped in with all the other reasons that a DV restraining may be issued. When petitioners are filling in item 21 on DV-100 they aren't as detailed as they should be sometimes, so my main question here is who is going to determine if the reasons exist for the sheriff to serve it for free? The clerk, the judge or the Sheriff's office?</p> <p>2. I also think you will have to modify DV-100 to uncheck item 17 and the corresponding box on the TRO. This makes a blanket request and order for free service and that doesn't appear to be the case when you look at the legislation.</p> <p>3. This is creating a lot more work for the petitioner</p>	<p>1. All domestic violence restraining orders are served without cost to the protected person. Civil Harassment orders may be served without cost to the protected person only in cases of sexual assault or stalking. This differentiation is made clear on CH-101/DV-290.</p> <p>2. The committees agreed to change the wording in item 17 on DV-100 to clarify that the protected person bears no fee responsibility.</p> <p>3. The litigant is only required to fill out</p>

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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				<p>and for the clerks in the office. The way I read the legislation and the background you provided, if a petitioner wants the free service they will have to fill out the fee waiver application and order (even if they don't qualify) and they will have to also fill out the new form – REQUEST AND ORDER FOR FREE SERVICE OF RESTRAINING ORDER.</p> <p>4. Another question – is the Sheriff's office going to be able to bill for "due diligence" services?</p> <p>5. On CH-100, stalking and sexual assault are also lumped into item 11 with all the other reasons for issuing a restraining order and if the petitioner is not specific in item 10, those reviewing the forms will not be able to determine if free service qualifies.</p> <p>If the determination issues are clarified, I think the form is OK.</p>	<p>the fee waiver application and the <i>Request and Order for Free Service of Restraining Order</i>. It is not necessary for the litigant to complete the Order on <i>Application for Waiver of Court Fees and Costs</i> (form 982(a)(18)).</p> <p>4. Government Code section 6103.2 states that the fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731. It is not entirely clear, but it would seem that the sheriff could bill for this service.</p> <p>5. CH-100 is being revised simultaneously to include an item in which the petitioner states whether free service is requested because the petition is based on stalking or a credible threat of violence resulting from a threat of sexual assault.</p>
12.	Evvy Leviege Braggs	A	N		No response required.

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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	Domestic Violence Case Manager Superior Court of California, County of Alameda				
13.	J. Louis #110 Detective, Domestic Violence Prevention Unit Berkeley Police Department	A	N		No response required.
14.	Stephen Love Court Executive Officer Superior Court of California, County of San Diego	N	N	<p>Proposal requires the court to process more fee waivers than under current practice. This rule will cost the court significant staff time in processing fee waiver applications on approximately 75% of DVTRO petitions (5,500 per year plus Civil Harassment TRO's for stalking and sexual assault). This will require approximately 5 minutes of clerical staff-time per petition to review. Court administration will also need to audit and reconcile Sheriff's billing report with court fee waivers from operational case files to ensure accuracy (significant time). These comments do not even consider the state cost to pay the sheriff for service (part of the FY03-04 budget request).</p> <p>Solution: amend statute to provide no fee for service shall be charged or collected by law enforcement for serving domestic violence restraining orders.</p>	<p>The statute requires the Judicial Council to promulgate forms to carry out the statute. As currently worded, the statute allocates the cost of service between the courts and the sheriff's department. The proposed form will create a paper trail to allow the courts to determine what costs they are responsible for.</p> <p>Courts have options with respect to the fee waiver forms. Clerks can ask litigants, upon the initial filing, if they wish for the sheriff to serve the order. If the answer is no, then the court does not need to require the litigant to complete a fee waiver request.</p> <p>If the answer is yes, the clerk can conduct a records search to determine if a fee waiver is currently on file. If yes, then the clerk need only process form CH-101/DV-290.</p>

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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					If the litigant has not already obtained a fee waiver and thinks that they qualify, then the litigant will need to complete the <i>Application for Waiver of Court Fees and Costs</i> (form 982(a)(17)) and form CH-101/DV-290. Form CH-101/DV-290 takes the place of the <i>Order on Application for Waiver of Court Fees and Costs</i> (form 982(a)(18)) for the purpose of free service by the sheriff.
15.	Ms. Sandra Mason Director of Civil Operations	AM	N	<p>1. The box that the Sheriff is required to complete should also have additional lines for the cancellation of service and the preparation of a not-found return for fiscal services.</p> <p>2. This form and the application for fee waiver should be included in the DV instructions, along with instructions on how, when and why the forms should be completed.</p>	<p>1. Government Code section 6103.2 states that the fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731. Agree to revise the form to “Service was attempted or completed on (date): ...”</p> <p>2. Item 17 of the application for a DV restraining order references the forms and instructs litigants to consult the court clerk for more information. Procedures vary among the courts so the instructions cannot be universal.</p>
16.	Le Mans Nichols Family and Domestic	AM	N	The form is difficult for self-represented litigant or even an attorney to comprehend without studying the	

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
(adopt form CH-101/DV-290)

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	Violence Court Coordinator Superior Court of California, County of Monterey			<p>underlying codes. The form may be used as a billing device for the Sheriff, but the applicant will need to understand it. The choices must also be clear to the judge signing the order.</p> <p>1. I could not find the form "Fee Waiver Request", assumed you were referring to current Application for Waiver of Court Fees and Costs (form 982a.17) and substituted this name for "Fee Waiver Request". I also did not find "Fee Waiver Request" on proposed future forms but may have missed it. It would be a good idea to have a different waiver form for this.</p> <p>Recommend: 2. It is important that the Application for Waiver of Court Fees and Costs (form 982(a)(17)) be completed and considered in every case. Suggest insert at statement in the beginning of the form by applicant that he or she has completed the form.</p>	<p>1. The committees considered developing a specific fee waiver form for the purpose of seeking free service of process. However, there are at least two problems with that approach. If a litigant was requesting a fee waiver for a related matter, they would be required to complete two separate forms. Second, it could create confusion because people might not realize which fee waiver form they should complete. Ultimately, the committees decided that it would be less confusing to continue to use the existing fee waiver form.</p> <p>2. Some cases will not require a fee waiver application. For this reason, the form allows the court clerk to check the appropriate box and sign the form. The reference to requiring the litigant to complete the <i>Application for Waiver of Court Fees and Costs</i> (form 982(a)(17)) has been deleted.</p>

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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				<p>3. To clarify which restraining order is requested, suggest it be identified by name as well as form number.</p> <p>4. In the Order section include the 3 choices, the person does not qualify for a financial fee waiver, does not qualify but does qualify for free service under CCP527.6(p) and the final option, does not qualify under either. Draft language follows.</p> <p>REQUEST AND ORDER FOR FREE SERVICE OF RESTRAINING ORDER Protected Person's Request</p> <p>I am requesting free service of my restraining order. (Protected person must complete the waiver form and check box 1 and either box 2 or box 3)</p> <p>1. ? I have filled out the mandatory Application for Waiver of Court Fees and Costs (form 982(a)(17)).</p> <p>2. ? I have asked for a Domestic Violence Restraining order on form DV-100.</p> <p>3. ? I have asked for a Harassment Restraining Order on form CH-100. My request is based upon my fear of (you must check at least one box.)</p> <p>? Sexual Assault</p>	<p>3. The committees agreed to include the name of the action as suggested.</p> <p>4. The litigant will never have to pay a fee for service by the sheriff, regardless of his or her financial status. Therefore, the question is whether the court or the sheriff has to pay. If the person qualifies for a fee waiver, the sheriff has to pay. If the person does not qualify for a fee waiver, the court has to pay. The committees agreed to revise the form to clarify that these are the only two options.</p>

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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				<p align="center">? Stalking</p> <p>I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.</p> <p><i>Date and signature</i></p> <p>COURT ORDER</p> <p>The Court having reviewed the protected person's completed Application for For Waiver of Court Fees and Costs finds that (Check one box only)</p> <p>4a. ? The protected person qualifies for a financial fee waiver. The order shall be served by law enforcement for free pursuant to Government Code 26750.</p> <p>4b. ? The protected person does not qualify for a financial fee waiver but the order shall be served for free per CCP527.6(p). subject to reimbursement of costs by the court pursuant to Government Section 6103.2(b).</p> <p>4c. ? The protected person does not qualify for free service of the restraining order under CCP 527.6 (p). Fees must be paid by protected for service.</p>	

SPR03-38

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17.	Laraine Noel Court Services Supervisor Superior Court of California, County of Trinity	N	N	The Court should NOT be billed – it is the customer's action. We received many fee waivers. Our Court is small and does not have the means to verify information or collect when judgment is entered. The few that have been caught have been filled out dishonestly. Courts are already being taken advantage of. Our Marshal has a system in place to track for the service fees.	The statute requires the Judicial Council to draft forms and to develop a procedure. The comment appears to be requesting a legislative change.
18.	Summer Peard Court Services Assistant/Clerk Superior Court of California, County of Tehama	A	N		No response required.
19.	Catherine Portillo Volunteer Attorney Harriett Buhai Center	AM	Y	For the sake of conformity, and to avoid confusion, especially by self-represented litigants, this form should be printed in the "plain language" format now found on all judicial council forms used in Domestic Violence Prevention Act ("DVPA") cases.	The form is used in civil harassment cases as well as domestic violence cases. The plain language style is currently reserved for domestic violence and adoption forms. Therefore, the form must retain the "standard" Judicial Council style.
20.	Amber J. Price Judicial Assistant II Superior Court of Napa County	N	N	1. Rather than create a new form, could these changes be integrated into existing fee waiver application? 982(a)(18) or DV-170? 2. Language of Item 3b is unclear and will cause unnecessary confusion for pro se litigants.	1. Form 982(a)(18), <i>Order on Application for Waiver of Court Fees and Costs</i> is used for many types of actions. Incorporating the suggested change into that form would create confusion. 2. The committees agreed to revise Item 3 to clarify that the litigant never has to pay a fee for service. Otherwise, it is unclear what, specifically, the commentator is

SPR03-38

Domestic Violence and Civil Harassment Orders: Allocation of Service of Process Fees
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					suggesting.
21.	Liza Siebel Staff Attorney Break the Cycle	A	N	Does this mean that every DVRO applicant will have to fill out fee waiver forms too? How else will a judge whether to check 3a or 3b?	A litigant who qualifies for a fee waiver and wants the sheriff or marshal to serve a restraining order will need to complete a fee waiver application, unless his or her county has instituted a protocol where the sheriff or marshal does not bill the court for service of process. A litigant who does not qualify for a fee waiver and wants the sheriff or marshal to serve a restraining order will not need to complete a fee waiver application but will need to complete CH-101/DV-290. A litigant who has previously been issued an <i>Order on Application for Waiver of Court Fees and Costs</i> (form 982(a)(18)) will not need to complete another but he or she will need to complete CH-101/DV-290.
22.	Hon. John Smiley Assistant Presiding Judge Superior Court of California, County of Ventura	A	N		No response required.
23.	Ms. Molly Sugarman Paralegal Placer County Family Court Facilitator	A	N		No response required.